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09/603,812	06/26/2000	Michael Kraus	39732/DBP/E43	2076

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EXAMINER

EVANISKO, GEORGE ROBERT

ART UNIT

PAPER NUMBER

3762

DATE MAILED: 07/24/2003

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Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/603,812

Applicant(s)

KRAUS ET AL.

Examiner

George R Evanisko

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7, 8 and 10-12 is/are rejected.
- 7) ☒ Claim(s) 5 and 6 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 5/8/03 has been entered.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, 4, 7, 8, and 10-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Barreras, Sr. et al (5735887). Barreras shows capacitor 73 being used to supply energy for the reception of data and capacitor, 105, supplying energy for the transmission of data. Although capacitor 105 may not power all the transmitter circuitry, it still is an energy storage means that provides energy for the transmission of data. In addition, the capacitors must inherently provide sufficient energy to the transmitter and receiver to transmit and receive since the device would not operate if they did not provide sufficient energy.

Claims 1, 2, 4, 7, 8, 11, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Schulman et al (5531774). Schulman states in column 11 the use of the receiver 200 containing diodes and energy storage capacitors to generate a DC voltage for the power supply

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section for the operation of the receiver. In addition, Schulman discusses the use of downconverter and capacitors, 203B, in column 25 for use in supplying power for the transmission circuit.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over Barreras, Sr. et al (or Schulman et al).

Barreras (or Schulman) discloses the claimed invention except for the transmitter and receiver capacitors being different sizes. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the telemetry device as taught by Barreras (or Schulman), with the use of the transmitter and receiver capacitors being of different sizes

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since it was known in the art that transmitter and receiver capacitors are used that are different sizes to provide the different power and control requirements of the transmitter and receiver and are coordinated with the respective transmitter and receiver to send data efficiently. In addition, it would have been an obvious matter of design choice to a person of ordinary skill in the art to modify the telemetry device of Barreras (or Schulman) with the use of different size transmitter and receiver capacitors, because Applicant has not disclosed that different size transmitter and receiver capacitors provides an advantage, is used for a particular purpose, or solves a stated problem. One of ordinary skill in the art, furthermore, would have expected Applicant's invention to perform equally well with the telemetry and receiver capacitors as taught by Barreras (or Schulman) because it efficiently provides a bi-directional telemetry device. Therefore, it would have been an obvious matter of design choice to modify Barreras (or Schulman) to obtain the invention as specified in the claim(s).

Claim 10 is rejected under 35 U.S.C. 103(a) as being unpatentable over Schulman et al.

Schulman discloses the claimed invention and powering other implanted devices (col 34) except for the pacemaker, defibrillator, or cardioverter. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the implantable transmitter and receiver as taught by Schulman, with the use of the transmitter and receiver in a pacemaker, defibrillator, or cardioverter since it was known in the art that pacemakers, defibrillators, or cardioverters use implantable transmitters and receivers to easily power the pacemakers, defibrillators, or cardioverters and to easily transmit data.

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Claims 1, 7, 8, and 10-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Weijand et al (5999857). Weijand shows the use of capacitors 12a and 12b to provide sufficient energy for the telemetry transmitter. In addition, he provides a power supply, 66, to provide sufficient energy for the receiver, but he does not disclose the power supply to be a buffer capacitor. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the receiver power supply as taught by Weijand with a buffer capacitor since it was known in the art that buffer capacitors are used as power supplies in implantable devices to provide a source of energy to power internal components that is easily recharged from an incoming RF data signal.

#### *Allowable Subject Matter*

Claims 5 and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### *Response to Arguments*

Applicant's arguments with respect to the claims have been considered but are moot in view of the new ground(s) of rejection necessitated by amendment. It is noted that the claims use the language "buffer capacitor". A buffer capacitor is a capacitor that stores and provides energy. The capacitors of Weijand, Schulman, or Barreras perform that function and are buffer capacitors.

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*Conclusion*

Any inquiry concerning this communication or earlier communications from the examiner should be directed to George R Evanisko whose telephone number is 703 308-2612. The examiner can normally be reached on M-F 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 703 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are 703 306-4520 for regular communications and 703 306-4520 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1148.

George R Evanisko  
Primary Examiner  
Art Unit 3762

7/21/3

GRE

July 21, 2003